

United States Court of Appeals For the First Circuit

No. 23-1682

JOE ALVES, individually and on behalf of all others similarly situated,

Plaintiff - Appellant,

v.

GOODYEAR TIRE AND RUBBER COMPANY,

Defendant - Appellee.

Before

Kayatta, Howard and Rikelman,
Circuit Judges.

JUDGMENT

Entered: December 18, 2023

Plaintiff-Appellant Joe Alves appeals from the district court's July 24, 2023, order dismissing his complaint for lack of personal jurisdiction but allowing him to seek to amend the complaint within 30 days. This Court issued an Order to Show Cause flagging finality concerns, see 28 U.S.C. §§ 1291, 1292, and Alves has responded. Having fully considered Alves' arguments, as well as our own precedents, we conclude that the ruling of the district court is not an immediately appealable "final judgment." See Acevedo-Villalobos v. Hernandez, 22 F.3d 384, 388-89 (1st Cir. 1994) ("In short, we hold that when a district court uses the words, 'The complaint is dismissed,' without expressly granting the plaintiff leave to amend, this is a 'final decision' from which a timely appeal may be taken."); see also Mirpuri v. ACT Mfg., Inc., 212 F.3d 624, 629 (1st Cir. 2000) ("In our view, a final judgment occurs where ... an action is dismissed[] [and] leave to amend is explicitly denied").

A motion seeking entry of final judgment is pending in the district court. Prior to appealing, Alves gave the district court no meaningful opportunity to enter judgment based on Alves' disavowal of intent to seek to amend the complaint. Alves is free to notice a new appeal once the district court has entered final judgment.

In accordance with the foregoing, the appeal is **DISMISSED**. See Local Rule 27.0(c) (court may dismiss appeal at any time if jurisdiction lacking).

By the Court:

Maria R. Hamilton, Clerk

cc:

Joseph P. Guglielmo
Carey Alexander
Brian C. Gudmundson
Ethan Samuel Binder
Michael J Laird
Rachel Kristine Tack
Michael T. Maroney
Mark Melodia
Sophie Kletzien